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COMBINATION BETWEEN DIFFERENT OWNERS OF DISTINCT PATENTS.

There has existed for some years a sort of legal query whether there could be an illegal monopoly under the anti-trust act or any state statute as to patented articles. Of course, no state law could make illegal any combination for the purpose of a monopoly in such articles, if the government patent laws meant to, and constitutionally could, attach to the monopoly in a patent the further right to combine with the owners of other such monopolies in the general control of the sale of their inventions.

The question in regard to the anti-trust act is from the double view of what attaches to the grant of a patent and what, whatever may be considered the extent of the monopoly conferred by patent law, is the intent of the anti-trust act so far as patented articles are concerned.

The Supreme Judicial Court of Massachusetts, in a recent case, had before it the question whether an agreement for an inventor to assign to a maker of patented machines all inventions, improvements and patents during a period of ten years after his employment by said maker should cease was enforceable, where it was shown that such an agreement was intended to further a combination for the control of the production and sale of patented shoe machinery. United Shoe Machinery Co. v. LaChapelle, 99 N. E. 289.

It was claimed by the machinery company that the effect of the decision in Bement v. National Harrow Co., 186 U. S. 70, was that there could be no unlawful combination between the owners of different patents, whereby they might agree among themselves, that a holding company should acquire assignment of patent rights and issue licenses for the manufacture and sale of patented devices on such terms and conditions as the licensing company might prescribe.

That position, if tenable, would seem to take on tremendous importance under the ruling in Henry v. A. B. Dick Co., 224 U. S. 1, which held, there being no question of combination involved, that a patentee may annex such conditions as he chooses to the use of his invention. Considering the reach a single patent has under that rule, it is easy to imagine that its influence in combination with other patents would increase in a kind of geometrical ratio, until but little would be left for the anti-trust act to control.

The idea of such a pervasive interlocking of things patented with things unpatented as could be brought about under the Dick decision helps greatly to enforce the view by the Massachusetts court, formerly held, and still adhered to, by other courts before the Dick decision was rendered, that the anti-trust act meant to prohibit combinations as to patented articles just as to other things which are the subjects of interstate commerce.

The Massachusetts court says the Bement case does not show any finding by a referee that there was any illegal combination, and there was only a question of conditions annexed to the use of inventions protected by letters patent. Of this view too is the case of Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co., 154 Fed. 358, 83 C. C. A. 336, a decision by Seventh Circuit Court of Appeals, which would have been glad to have found the case otherwise. It is the only court in the country that seems to have held there could not be an unlawful monopoly in different inventions through combination of different owners.

We should say that the Ninth Circuit Court of Appeals held the same thing, but this holding was based solely upon its view of the Bement case. U. S. Consolidated Raisin Co. v. Griffin & Skelley Co., 126 Fed. 364, 61 C. C. A. 334.

Before the Dick decision was rendered it was well said: "Patents confer a monopoly as respects the property conferred by them, but they confer no right upon the owners

of several distinct patents to combine for the purpose of restraining competition in trade. Patented property does not differ in this respect from any other. The fact that one patentee may possess himself of several patents and thus increase his monopoly affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture and enhance prices." National Harrow Co. v. Hench, 83 Fed. 36, 27 C. C. A. (3d Circuit) 349, 39 L. R. A. 299.

Another court said: "The monopoly of one patentee cannot be extended and made more of a monopoly by that of another," and this pithy principle puts to rout all the laborious reasoning advanced in Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co., *supra*.

The Dick case leads the Massachusetts court to go into the matter somewhat more fully. It said: "It may be true that, inasmuch as the patentee may annex any condition to the sale of his invention, he may subject the user of it to a series of obligations as to other kindred or disconnected articles so extensive in number and so extensive in scope as to gain an absolute monopoly, the size of which would be measured only by the necessity or taste of mankind in the use of particular inventions and the commercial power of the holder of the patent. Whatever else may be said of such a monopoly, it nevertheless would be true that it would be built on the patent and not on a combination.

Conditions annexed by the patentee to the enjoyment of an invention are legal even though resulting in an extended monopoly. Combinations among patentees resulting in an extended monopoly are illegal."

The Seventh Circuit Court of Appeals said, by way of sustaining its conclusion that patented articles were not to be deemed articles in interstate commerce and it would really seem that some such incomprehensible position were necessary for its unique conclusion, that different patentees could combine for a joint agent to control the manufacture and sale of patented devices, the anti-trust act to the contrary notwithstanding. A patent gives a patentee rights against infringers or users upon terms lawfully imposed. It is a shield for him in protecting the rewards of his skill. It is not a weapon of combination, whereby the rights of others may be invaded.

NOTES OF IMPORTANT DECISIONS.

CARRIERS—ANTICIPATING INJURY TO ARISE FROM MISCONDUCT OF PASSENGERS.—The case of Baltimore & O. R. Co. v. Rudy, 84 Atl. 241, decided by Maryland Court of Appeals, held that a declaration, which claimed liability of a carrier under its duty to carry passengers safely, stated a good cause of action arising out of very unusual circumstances.

The declaration alleges the drinking and carousing of passengers and continuance thereof for a long time, and their throwing from the windows of the car they were in empty beer bottles at trains passing in opposite direction on the other of the carrier's double track; that no effort was made to control such misconduct and that plaintiff a passenger on the train was seriously injured by a bottle thrown against a passing train and the broken pieces rebounding and striking him in the eye.

It would appear that a particular injury of this kind would be very difficult to foresee. Tne court answers the contention of defendant of non-anticipation of the particular injury by saying it could be as well contended that: "If instead of throwing bottles about these parties had been handling pistols in a careless and reckless manner, the defendant's employees would have been under no obligation to interfere until it was apparent some one was about actually to discharge a pistol. It would not be rational to require knowledge or means of knowledge of the particular act by which injury might be inflicted. All that can be required is knowledge or means of knowledge of such disorderly or reckless conduct as is likely to result in injury in some manner to others, if permitted to continue."

Any other rule than the court lays down would be practically to relieve negligence of nine-tenths of its legitimate responsibility. There should be an extended horizon of liability as to one who at the start ignores his general duty.

THE JURISDICTION OF STATE COURTS OVER MARITIME VESSELS ENGAGED IN INTERSTATE AND FOREIGN COMMERCE.

Among the fallacies which often exist in legal as well as lay minds there is no more prevalent one than the belief that the only person who can lay his hands on a maritime vessel is a United States Marshal. To show how deeply rooted this idea is in the minds of the members of the bar I may narrate an incident in my practice of a few years ago, when I directed a sheriff to attach a large lake vessel in an action for personal injuries pending in a state court against a foreign corporation owning the boat. The sheriff obeyed me at first but later took counsel with a well-known firm of attorneys who advised him that he was acting without jurisdiction. He, thereupon, released the attachment and the boat steamed away. In an action against the sheriff for his negligence in permitting attached property to escape his possession, the same firm of attorneys appearing for him, set up this jurisdictional defense. On telling an older lawyer of the facts of my case and expressing my surprise at the defense suggested, he informed me that the sheriff was perfectly correct in his position and that I had made a fatal blunder in my case in not proceeding in admiralty. Determining, then, to see to how great an extent this idea prevailed among the members of the bar (for I was firmly convinced from my study of the authorities that my attachment was well founded), I made it a point in the time before the case came on for trial, to inquire of every lawyer whom I met, his opinion on the case, and I found that out of fourteen lawyers approached, nine of them, one of the nine being a professor in a well-known law school, advised me that my attachment was without jurisdiction, and when finally the case came on in the *nisi prius* court, the trial judge directed a verdict against me, without listening to argument, declaring that the proposition was elementary, and an appeal to the supreme court had to be taken to set him right. To do my small part toward the correction of this fallacy, I have prepared for publication the following outline as to the jurisdiction of state courts over maritime vessels, not that I have studied out any new principle of law, for the line of authorities is well established, but to attempt to explode as thoroughly as I can this curious fallacy existing in so many legal minds.

The jurisdiction of the United States Courts over maritime vessels is based upon the section of the federal constitution which makes the grant of power to the judiciary.

"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states; between citizens of the same state claiming lands under grants of different states and between a state, or the citizens thereof, and foreign states, citizens or subjects."

Under this clause of the Constitution, Congress passed the general judiciary act of September 24, 1789,[1] which provides the following rules for the enforcement of maritime rights:

"The district courts shall have jurisdiction as follows: * * * Eighth, of all civil cases of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it; and of all seizures on land and waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such cases and seizures is given to the circuit courts. And shall have original and exclusive cognizance of all prizes brought

(1) Sec. 563, R. S. U. S.

into the United States except as provided in Paragraph 6 of Section 629."

This constitutional provision and statute remained without direct construction by the highest court of the land for over fifty years, until the year 1858, when the celebrated case of Taylor v. Carryl was passed upon by the Supreme Court of the United States. This case is reported in 20 How. 583 and was on writ of error to the Supreme Court of Pennsylvania. The facts upon which the case arose were novel and interesting.

The barque Royal Saxon was the property of a citizen of Great Britain and while at the port of Philadelphia was seized by the sheriff of Philadelphia County, under writ of attachment issued out of the state court by a citizen of Louisiana in a suit against the owner of the barque. Later, while the writ of attachment was operative and a motion for the sale of the barque thereunder was pending in the state court, the seamen on board the barque filed their libel in the District Court of the United States, sitting in admiralty, for the wages due them. A writ was issued and delivered to the United States Marshal, who made a return thereon that he had attached the barque and found a sheriff's officer on board, claiming to have her in custody. A sale of the barque was subsequently made under the state attachment and a separate and independent sale was made under the federal court attachment, and the questions before the court arose in an action of replevin brought by the purchaser under the marshal's sale against the purchasers under the sheriff's sale, who held possession of the barque. There was no question as to the priority in time of the sheriff's attachment over that of the marshal, but the point was made by the plaintiff in replevin that the admiralty court was exclusive and superior and that when it assumed jurisdiction, immediately the jurisdiction of the state court ceased; that a ship was a juridical person, having a status in the courts of admiralty, and that the admiralty was entitled to precedence whenever any question arose which authorized a judicial tribunal to call this legal entity before it.

In passing upon this point the court quotes from Story's Commentaries, as follows:

"Mr. Chancellor Kent and Mr. Rawle seem to think that the admiralty jurisdiction given by the Constitution is, in all cases, necessarily exclusive. But it is believed that this opinion is founded on mistake. It is exclusive in all matters of prize, for the reason that, at the common law, this jurisdiction is vested in the courts of admiralty, to the exclusion of the courts of common law. But in cases where the jurisdiction of common law and admiralty are concurrent (as in cases of possessory suits, mariners' wages and marine torts), there is nothing in the Constitution necessarily leading to the conclusion that the jurisdiction was intended to be exclusive; and there is no better ground, upon general reasoning, to contend for it." "The reasonable interpretation," continues the commentator, "would seem to be that it conferred on the national judiciary the admiralty and maritime jurisdiction exactly according to the nature and extent and modifications in which it existed in the jurisprudence of the common law. When the jurisdiction was exclusive, it remained so; when it was concurrent, it remained so; hence the states could have no right to create courts of admiralty as such, or to confer on their own courts cognizance of such cases as were exclusively cognizable in admiralty courts. But the states might well retain and exercise the jurisdiction in cases of which the cognizance was previously concurrent in the courts of common law. This latter class of cases can be no more deemed cases of admiralty and maritime jurisdiction than cases of common law jurisdiction." 3 Storys Com., Sec. 1666, note.

The court then proceeds to say:

"In conformity with this opinion, the habit of courts of common law has been to deal with ships as personal property, subject, in the main, like other personal property, to municipal authority, and liable to

their remedial process of attachment and execution, and the titles to them, or contracts and torts relating to them, are cognizable in those courts. * * * Our conclusion is that the district court had no jurisdiction over The Royal Saxon when its order of sale was made and that the sale by the marshal was inoperative."

The next clash between state and admiralty jurisdiction arose nine years later when the case of The Moses Taylor,[2] was decided. The case came up on writ of error to the county court of the city and county of San Francisco and arose upon the provisions of a statute of the State of California. This statute related to actions against steamers, vessels and boats, granted a cause of action for each of six enumerated classes of wrongs; and declared that these causes of action should constitute liens upon such vessels and have priority in the order enumerated. The statute also provided that actions for demands arising upon any of these grounds might be brought directly against the vessel by name; that it might be attached as security and sold to satisfy the judgment recovered by the plaintiff. Under this statute one Hammons, who had been a passenger upon the vessel Moses Taylor, brought an action in justice court against the vessel for breach of contract of carriage and recovered judgment, against the protest of the agent of the vessel, who denied the jurisdiction of the court and insisted that the cause of action was one over which the courts of admiralty had exclusive jurisdiction. This judgment was affirmed on appeal to the county court and as the amount involved was too small to permit an appeal to the State Supreme Court, the Supreme Court of the United States issued its writ of error to such county court.

The court in reversing the case, laid down the following propositions:

(1) That the proceeding authorized by the California statute was distinctly a proceeding in the nature and with the incidents of a suit in admiralty.

(2) That the contract sued upon was within the admiralty and maritime jurisdiction of the federal courts as a maritime contract.

(3) That in all cases to which the judicial power of the United States extends, Congress may rightfully vest exclusive jurisdiction in the federal courts.

(4) That the cognizance of court causes in admiralty and maritime jurisdiction vested in the District Courts of the United States by the 9th section of the Judiciary Act, has been made exclusive by Congress, saving the right of a common law remedy.

(5) That a proceeding *in rem*, as used in the admiralty courts, is not a remedy afforded by the common law, but is rather a proceeding under the civil law.

At the same term at which the case of the Moses Taylor was decided, the supreme court laid down its decision in the case of The Hine v. Trevor, reported in 4 Wall. 555.

This case arose on error to the Supreme Court of Iowa. The decision was based upon the following facts:

A collision occurred between the steamboat Hine and Sunshine on the Mississippi river, near St. Louis, in which collision the Sunshine was injured. Some months later the owners of the Sunshine caused the Hine to be seized while she was lying at a wharf in an Iowa port, in a proceeding under the laws of that state, to subject her to sale in satisfaction of such damage claim. This statutory proceeding provided that in such a case a vessel might be sued and made defendant without any proceeding against the owners; that a writ might be issued and the vessel seized on filing a petition similar in substance to a libel; and that the vessel might be condemned and an order made for her sale if the liability should be established for which she was sued.

The proceeding being sustained by the Supreme Court of Iowa, error was brought to the Supreme Court of the United States. The latter court, reversing the case, decided:

(2) 4 Wall. 397.

(1) That the admiralty jurisdiction to which the power to the federal judiciary is by the Constitution declared to extend is not limited to tide-water, but covers the entire navigable waters of the United States.

(2) That the original jurisdiction in admiralty exercised by the district courts, by virtue of the act of 1789, is exclusive not only of other federal courts, but of the state courts also.

(3) That a case of collision between two vessels is an admiralty cause of which state courts have no jurisdiction in a direct action against the vessel.

(4) That the remedy provided by the Iowa statute was not a common law remedy, but an admiralty proceeding *in rem*.

A different question of jurisdiction arose in the following several cases which came before this court.

The first of these is the case of Leon v. Galceran[3], error to the District Court of the State of Louisiana.

The plaintiff in this case had rendered services as a mariner on the steamer Gallego, and his wages being unpaid he brought an action *in personam* in the Louisiana State Court, against the owner of the boat and sued out at the same time an ancilliary writ of attachment or sequestration under which the vessel was seized and held to satisfy any judgment which might be obtained. The defendant released the boat by giving bond, and the plaintiff recovering judgment in his action against the owner of the boat brought an action upon this bond of release. It was contended that the bond was taken *coram non judice* and void, the court having no jurisdiction in the action. It was held by the United States Supreme Court:

(1) That mariners in a suit to recover wages, may proceed against the owner of the ship, *in personam*, or *in rem*, against the ship, at their election.

(2) That if they elect to proceed *in rem* against the ship, the jurisdiction in these cases is exclusively in the United States District Courts.

(3) That if they elect to proceed *in personam* they will find jurisdiction existing either in the U. S. Circuit Court or in a state court.

(4) That even where a maritime lien arises, the injured party may waive his lien and may resort to his common law remedy in the state court, against the owner of the vessel.

This doctrine was further elaborated in the case of American Steamboat Company v. Chase.[4]

This was in error to the Supreme Court of Rhode Island. The action was brought in the state court by an administrator *in personam* against the owners of a vessel, to recover damages for the death of his intestate in a collision which occurred between two vessels when both were on maritime waters, the plaintiff basing his action upon a Rhode Island statute giving a cause of action against common carriers for negligent acts and providing that such cause of action shall survive.

Two contentions were made by the defendant: (1) That the common law courts cannot exercise jurisdiction and give a remedy for a consequential injury, growing out of a marine tort, where no remedy for such an injury exists in the admiralty courts. (2) That a suitor cannot have a remedy in such a case in a common law court, even if the admiralty courts have jurisdiction, as the right of action was vested by a state statute enacted subsequent to the passage of the Judiciary Act.

The United States Supreme Court ruled adversely to both these contentions, holding consistently, that the Judiciary Act means just what it says: that suitors may have a common law remedy where the common law is competent to give it; and the remedy is none the less a common law one, where the right is conferred by a state statute, so long as the exclusive jurisdiction of admiralty is not invaded.

(3) 11 Wall. 185.

(4) 16 Wall. 522.

A new question arose in the next case, Johnson v. Elevator Company.[5]

In that case a tug, owned by one Johnson, was towing a schooner up the Chicago river, and through careless handling the schooner turned and the jib boom ran through the wall of an elevator, causing the loss of a quantity of grain. An action was brought by the elevator company against Johnson in the state court and his tug was attached by the sheriff. The statute of Illinois under which suit was brought gives a lien on all water craft for all damages arising from injuries done to persons or property by such water craft whether the same are aboard said vessel or not, where the the same shall have occurred through the negligence or misconduct of the owner, agent, master or employee. The act also provides for enforcing the lien by a writ of attachment against the vessel. The defendant Johnson contended that such a statute could not be enforced under the rule laid down in the Moses Taylor. The United States Supreme Court held.

(1) That the injury complained of was not a maritime tort, the substance and consummation of the wrong having taken place on land, and a court of admiralty would have had no jurisdiction of the action.

(2) That the remedy for such a wrong is wholly at common law and may be pursued in a state court, according to the provisions of a state statute, even though such statute undertakes to give a lien against the vessel.

Most of the above decisions have been in actions of tort. Another class of questions arises, however, as to state statutes giving a lien on a vessel for supplies furnished or repairs made upon her in her home port. There is a long line of decisions passing upon these questions, beginning with the case of The General Smith,[6] decided in the year 1819, almost all of which decisions are epitomized in the opinion of Mr. Justice Gray in The Glide.[7] The latter case was an action brought in the State Court of Massachusetts, under a state statute giving a lien upon a vessel for work done and materials furnished in her construction or repair, and which statute provided machinery for the enforcement of such lien by petition similar to the usual statutory procedure for the foreclosure of a mechanic's lien on other property. Mr. Justice Gray, after reviewing all the decisions on this point, declares the law to be as follows:

(1) For necessary repairs or supplies furnished for a vessel in a foreign port, a lien is given by the general maritime law, following the civil law, and may be enforced in admiralty.

(2) For repairs or supplies in the home port of the vessel no lien exists or can be enforced in admiralty, under the general law, independent of local statute.

(3) Whenever the statute of a state gives a lien to be enforced by process *in rem* against the vessel for repairs or supplies in her home port, this lien, being similar to the lien arising in a foreign port under the general law, is in the nature of a maritime lien, and, therefore, may be enforced in admiralty in the courts of the United States.

(4) This lien, in the nature of a lien, and to be enforced by process in the nature of admiralty process, is within the exclusive jurisdiction of the courts of the United States, sitting in admiralty, and the local courts have no jurisdiction. If, however, the person furnishing such repairs waive the statutory lien and bring an action *in personam* against the owners of the vessel the state courts will have jurisdiction to seize and hold such vessel on ancillary attachment or on execution.

We now come to another class of cases where a lien is claimed, either by the common law or under a state statute, and there is no original jurisdiction in admiralty to enforce such a lien. An example of these cases is where a state statute has

(5) 119 U. S. 388.
(6) 4 Wheat. 438.
(7) 167 U. S. 606.

been enacted granting a right of mechanic's lien for work done or materials furnished in the construction of a vessel.

While the jurisdiction of admiralty exists over actions against vessels for repairs or supplies furnished them, as established by the decision in the Glide,[8] it has been uniformly held that such jurisdiction does not extend to a contract for building a vessel or for work done or materials furnished in her construction.[9] The Capitol.[10] It was decided, however, in the case of Edwards v. Elliott,[11] that in respect to such contracts for construction, it was competent for the states to enact such laws as their legislatures might deem just and expedient, and to provide for their enforcement *in rem*.

Still another question arose in the case of The Knapp, Stout & Co. v. McCaffrey.[12] This was an action in equity brought in the State Court of Illinois by a tug owner against the owners of a certain raft of logs to enforce a common law lien for towage. The court held that although, under the various conflicting decisions, it was very doubtful whether such a lien would exist in admiralty at all, it would at any rate, not oust or supplant the common law lien dependent upon possession; that although the action was not in law, but in equity, the proceeding was within the exception of "saving to suitors in all cases the right of a common law remedy, where the common law is competent to give it," the reservation being not of an *action* at common law, but of a common law *remedy*, and a remedy not necessarily implying an action; and that as the suit was *in personam*, similar to a suit for the foreclosure of a mortgage, and was brought to enforce a common law remedy, the state courts were correct in assuming jurisdiction.

Although, as has been seen by the line of authorities discussed above, it has been clearly decided that the state courts have jurisdiction over maritime vessels in a large number of cases, a very recent construction by the supreme court of a federal statute, may serve, in some cases, to abridge this jurisdiction.

The case decided was that of Richardson v. Harmon.[13] The case arose under the following circumstances: The steam barge "Crete," while proceeding up the Maumee river from Lake Erie, collided with the abuttment of a railway drawbridge, resulting in great damage to both barge and bridge. For the damage sustained by the bridge an action was brought against the owners of the barge in a common law court of the state at Toledo, Ohio. Thereupon, the owners of the barge filed their petition and libel in the District Court of the United States for a limitation of liability under Secs. 4283-4285, R. S. U. S., and Sec. 18 of the Act of June 26, 1884, and asking for an injunction against the prosecution of the pending action in the state court. Secs. 4283-4285 R. S. U. S. originally provided for the limitation of liability, in respect of all maritime claims arising out of the conduct of the master and crew, to the value of the interests of the owners in the vessel and her freight, and it had long been held thereunder, that as the admiralty court had no jurisdiction over an action for damages against a shipowner arising from a collision between the ship and a structure on land, the tort being non-maritime, there could be no limitation of liability therefor.[14] Subsequently there was enacted, however, the Act of June 26, 1884, the 18th section of which reads as follows:

"That the individual liability of a ship owner shall be limited to the proportion of any and all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the

(8) Supra.
(9) The Jefferson, 20 How. 393.
(10) 22 How. 129).
(11) 21 Wall. 532.
(12) 177 U. S. 638.
(13) 32 S. C. Rep. 27, decided Nov. 20, 1911.
(14) Ex parte Phoenix Ins. Co., 118 U. S. 610.

same shall not exceed the value of such vessels and freight pending: Provided, that this provision shall not affect the liability of any owner, incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to person employed by said ship owners."

It was held by the court that the words "any and all debts and liabilities" in the above statute apply to non-maritime torts, as well as to contracts, and limit the owners' risk, as to such torts, to his interest in the ship. The further prosecution of the action in the state court was enjoined.

I think it will appear that by the above decisions of the highest court of the land the following propositions have been definitely established.

(1) That the state courts have full jurisdiction to seize and hold maritime vessels, where the action is one *in personam* against the owner and the attachment of the vessel is only ancillary to the personal action.

(2) That the state courts also have jurisdiction to enforce against such vessel a proceeding *in rem*, where an admiralty court would have no jurisdiction of the wrong complained of.

(3) That where admiralty would have jurisdiction of the wrong a proceeding *in rem* against such a vessel cannot be maintained in a state court.

(4) That the jurisdiction over maritime vessels when assumed by the state court in a proper case, either in an action *in personam* under proposition (1) or *in rem*, under proposition (2), can be superseded by that of the admiralty court in only one event, *i. e.*, where the claim sued upon arises out of the conduct of the master and crew and a limitation of liability is petitioned for in the admiralty court, under the statute.

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MASTER AND SERVANT—INDEPENDENT CONTRACTOR.

WODNIK v. LUNA PARK AMUSEMENT CO. et al.

Supreme Court of Washington, August 21, 1912.

125 Pac. 941.

Where defendant amusement company operated an amusement park open to the public on payment of an admission fee, the fact that defendant company let space on the grounds to ano. er to operate a striking machine, in consideration of receiving 35 per cent of the gross receipts of the concession did not relieve it from liability for injuries to a patron, caused by a defect in a mallet used in operating the machine.

ELLIS, J.: This is an appeal by the defendants Luna Park Amusement Company and William Looff from a judgment rendered upon the verdict of a jury for damages for personal injuries to the plaintiff, which, it is charged, were caused by their negligence.

The complaint, so far as material to the questions presented, in substance alleged: That the defendants were the owners and managers of a place of public amusement at West Seattle, called "Luna Park," and had, by extensive and broadcast advertising, made the resort well known to the public, and that it was largely patronized by the public; that among the amusements there maintained was a mechanical device, called a "striking machine," so arranged that a person, by striking with a long-handled, heavy mallet upon a movable scale or balance, was enabled to register thereon the force of the blow; that on April 30, 1911, the plaintiff visited Luna Park, and accepted an invitation of the defendants, through their agent or employee in charge of the striking machine, to use the same, paid the money demanded therefor, and was given and used a mallet which was unsafe, in that the head was not securely fastened to the handle; that in using the mallet he swung it above his head with both hands, intending to strike the machine, when the head of the mallet flew off, and, the handle being released, he struck himself therewith a violent blow upon the knee, inflicting the injuries complained of. The negligence charged is that the defendants, their agents or employees, furnished to the plaintiff a mallet which they knew, or in the exercise of proper care, inspection, and supervision could have known, was unsafe for the purpose intended.

The answer admitted the ownership, management, and extensive advertisement of the

park as a place of amusement by the defendants, denied the allegations of negligence, denied that the defendants owned or operated the striking machine, and set up as an affirmative defense in general terms that the injury was the result of the plaintiff's own negligence. This was traversed by the reply.

(1) The evidence showed that one Friedle was the sole owner of the striking machine, and personally operated it on April 30, 1911, under a lease or concession of space from the defendants for the amusement season, paying the defendants 35 per cent of the gross receipts for the concession; that he hired and discharged his own employees; and that the defendants never exercised, or attempted to exercise, any authority over him. The appellants contend that under this evidence they cannot be held responsible for the injury. This position is not tenable. They were admittedly the owners, managers, and operators of Luna Park, and advertised its amusement features as a means of procuring the patronage of the public for their own pecuniary advantage. They received a part of the proceeds from the specific amusement feature, in patronizing which the respondent was injured. He was there by their invitation. There was an implied representation that the instrumentalities for amusement which they advertised were reasonably safe. The fact that the amusement was furnished by a third party under an independent contract with the appellants in no manner relieved them from the duty to see that the appliances were reasonably safe for the use intended. The duty of exercising reasonable care for the safety of their patrons, while engaged in the performance of the very purpose for which they were invited, cannot be avoided in any such way. Thompson v. Lowell, Lawrence & H. St. R. Co., 170 Mass. 577, 49 N. E. 913, 40 L. R. A. 345, 64 Am. St. Rep. 323; Richmond & Manchester Ry. Co. v. Moore's Adm'r., 94 Va. 493, 27 S. E. 70, 37 L. R. A. 258. We think that, as between the respondent and the appellants, the owner and operator of the striking machine must logically be held the appellants' agent.

(2) The appellants also contend that there was no evidence of negligence on their part. The respondent's testimony as to how the injury occurred was substantially as alleged in the complaint. We think that the fact that the head of the mallet flew off while the mallet was being used by the respondent for the very purpose for which it was furnished to him was sufficient to cast the burden of explanation upon the appellants. No explanation being offered, the jury was warranted in inferring that the head of the mallet came off because it was negligently and insecurely fastened to the handle.

"When a thing which causes injury is shown to be under the management of the defendant, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from a want of care." 1 Shearman & Redfield on Negligence (5th Ed.) § 59.

"The doctrine of res ipsa loquitur means that the jury, from their experience and observation as men, are warranted in finding that an accident of this kind does not ordinarily happen, except in consequence of negligence. As was said in Griffin v. Boston & Albany R. Co., 148 Mass. 143, 19 N. E. 166, 1 L. R. A. 698, 12 Am. St. Rep 526: 'All that the plaintiff upon this branch of his case was required to do what was to make it appear to be more probable that the injury came, in whole or in part, from the defendant's negligence than from any other cause'" Graaf v. Vulcan Iron Works, 59 Wash. 325, 328, 109 Pac. 1016, 1017.

(3) There was no duty of inspection resting upon the respondent. There was no evidence of any defect so patent that he ought to have observed it without inspection. He had the right to assume that the mallet was fit for the purpose for which it was furnished him. He cannot be held to have assumed the risk of injury from any defects not so patent as to have been apparent to the casual observer. This court is committed to the rule that the doctrine res ipsa loquitur, under conditions where there is no duty of inspection upon the servant, is applicable even as between master and servant. La Bee v. Sultan Logging Co., 47 Wash. 57, 91 Pac. 560, 20 L. R. A. (N. S.) 405; La Bee v. Sultan Logging Co., 51 Wash. 81, 97 Pac. 1104; Graaf v. Vulcan Iron Works, 59 Wash. 325, 109 Pac. 1016; Cleary v. General Contracting Co., 53 Wash. 254, 101 Pac. 888.

(4) A fortiori is the doctrine applicable in a case of this kind, where a customer or patron is present by invitation, and is injured by an instrumentality under the exclusive control of the defendant or his agents. Anderson v. McCarthy Dry Goods Co., 49 Wash. 398, 95 Pac. 325, 16 L. R. A. (N. S.) 931, 126 Am. St. Rep. 870. And for a still stronger reason should the doctrine be invoked where, as here, the instrumentality which caused the injury was handed to the patron for use in the very purpose for which he was invited. In the very nature of the case, the respondent could not be

expected to prove the specific defect in the mallet which caused the head to separate from the handle. That could only have been determined by inspection. The duty of inspection was upon the appellants. They offered no evidence of such inspection. The jury was warranted in finding them negligent.

(5) The appellants further contend that the respondent's own act in taking hold of the mallet handle near the upper end, as he testified he did, was the proximate cause of the injury, and that in so doing he was guilty of contributory negligence. The proximate cause was that cause without which the accident could not have happened. It is plain that, had the head of the mallet been securely fastened to the handle, the accident would not have happened, no matter where the respondent grasped the handle. It is equally plain that he was not guilty of contributory negligence. He had no reason to assume that the head of the mallet would fly off. In fact, as we have seen, he had the right to assume that it would not. There was no evidence that he was not using the mallet as it was intended to be used. We fail to find any evidence whatever of contributory negligence. Nor do we find any merit in the argument that the accident was one which could not reasonably have been anticipated. It was the natural and probable result of the insecure fastening of the head of the mallet to the handle. This or some similar accident would reasonably be expected from such a condition.

Many assignments of error are based upon the giving of certain instructions by the court, and upon the refusal to give certain others requested by the appellants. These, however, are sufficiently covered by what we have said of the law as applied to the facts. The case was submitted to the jury upon instructions fairly presenting the law applicable to the evidence. We find in the record no error which would justify a reversal.

The judgemnt is affirmed.

MOUNT and FULLERTON, JJ., concur.

NOTE.—*Responsibility of Amusement Park Proprietor for Negligence of Concessioners.*—Decision on this subject seems to be unanimous, that invitees are to be protected by the owner of a park against pitfalls and snares whether owned by concessioners or not, but beyond this it is divided as to liability as to negligence in operation of attractions by concessioners. Possibly at bottom they are nearly unanimous as to liability for management of what probably would cause injury, if that is bad.

In Reisman v. Public Service Corp. of N. J., 81 Atl. 838, the New Jersey Court of Errors and Appeals took the view that the proprietor of a pleasure resort contracting with one to give an exhibition of fireworks is not liable for the negligence of the latter in the handling of such fireworks, as the latter is an independent contractor, but in the opinion, and especially in its reference to Sebeck v. Plattdeusche Volksfest Verein, 64 N. J. L. 624, 46 Atl. 631, 50 L. R. A. 199, 81 Am. St. Rep. 512, the position seems to be accepted that the proprietors of the resort "were bound to use reasonable care to provide a safe place from which to view the exhibition." Of course, this may be on the theory, that such an exhibition may be inherently dangerous, if approached too closely and against such, as against pitfalls on the grounds, the general proprietor of the resort should provide.

In Stickel v. Riverview Sharpshooters Park Co., 25 Ill. 252, 95 N. E. 445, 34 L. R. A. (N. S.) 659, a visitor sued the owner of an amusement park for injury suffered from her being pushed into a chute in a sitting position and her leg being broken in her descent to the ground.

The court said: "While there are some decisions to the contrary, the greater weight of authority is that the owner (of the park) will not be relieved from responsibility because the exhibition is provided and conducted by the concessioner, provided it is of a character that would probably cause injury unless due precautions are taken to guard against it; and this duty applies not to construction alone, but to management and operation where the device is of a character likely to produce injury unless due care is observed in its operation." Here it is seen is a qualified responsibility—the attraction must be likely to cause injury so as to make negligence of its operator that of the owner. If it is not so likely, then such negligence does not involve the principle of *respondeat superior*. It is a little difficult to grasp this distinction. It cuts into the independent contractor rule in a way that has no well-defined limits. We can understand, that, if the attraction is a menace to safety, howsoever managed, the owner of the park would be responsible for inviting its use, but, if he is justified in inviting its use, he ought not to be responsible for negligence by the operator, if he is an independent contractor. The owner in this case was held liable because of negligence by operator in conducting an attraction "that would probably cause injury," if due care in its operation was not used. It was said the question of contributory negligence was properly submitted, but upon what phase it was submited does not appear. If an attraction appeared imminently dangerous, its very use by the visitor might be contributory negligence.

In Hollis v. Kansas City Mo. Retail Merchants' Assn., 205 Mo. 508, 103 S. W. 32, 14 L. R. A. (N. S.) 284, plaintiff was injured by a gondola run on a circular railway breaking down and throwing her against a post. The gondola was an attraction managed by a concessioner, who charged admission and divided his receipts with the proprietor of the amusement park, who also charged a general admission to the park. The court said: "The fact that the exhibition was provided and conducted by an independent contractor would not wholly relieve the defendant from responsibility, provided it was of such a kind that it would probably cause injury to a spectator, unless due precautions were taken to guard against harm," thus seemingly taking the

same view as in Stickel v. Riverview, etc., Co., *supra*. But, as the appliance or car in use was defective, this announcement would seem to be *obiter*. That of itself would seem to make the park proprietor liable. The opinion further along stresses this feature and concludes as follows: "In our opinion there was sufficient showing of negligence in the construction, operation and management of the appliances to have authorized a submission of the cause to the jury." Including "*management*" makes the decision one that is vague and uncertain.

In Thornton v. Maine State Agricultural Society, 97 Me. 180, 53 Atl. 979, 94 Am. St. Rep. 488, the facts show that plaintiff's intestate was killed by a bullet fired at a target in a shooting gallery run by a concessioner. Deceased was standing on railroad ground just opposite the fair grounds gate on the platform for visitors to the fair. The court said: "Having invited the public to its fair, it was the duty of the defendant to use reasonable care to keep its grounds and the usual approaches to them, so far as the approaches were under its control, in a safe condition, safe for all who were invited. * * * It was its duty so to do both in the original letting of space and in the subsequent inspection and supervision of the show permitted to give an exhibition, or the shooting gallery permitted to operate as part of the fair."

In Thompson v. Lowell, etc., St. Ry. Co., 170 Mass. 577, 49 N. E. 613, 64 Am. St. Rep. 323, it was said, broadly, that an exhibition "provided and conducted by an independent contractor would not wholly relieve the defendant from responsibility, provided it was of such kind that it would porbably cause injury to a spectator, unless due precautions were taken to guard against harm." Here again we see the limited application of the doctrine *respondeat superior*. It seems to be the view, that there is an implied promise by the proprietor, that what probably would cause injury will be harmless because it will be properly managed.

In Conradt v. Clauve, 93 Ind. 476, 47 Am. Rep. 388 (a shooting gallery concession case), it was said: "Those having charge of the practice, as well as those engaged in it, while perhaps not strictly agents or servants of defendant, were acting under license and permission of defendants; and such a relation existed between them as will hold defendants liable for injuries resulting from their negligence in not controlling the conduct and management of this part of their exhibition." This goes upon the idea that the private arrangements between owners and exhibitors was of no concern to invitees—the owner impliedly agreeing to protect all alike as to every part of the exhibition conducted by his permission. Of like tenor seem the cases of State Fair v. Marti, 30 Tex. Civ. App. 132, 69 S. W. 432 and Same v. Brittain, 118 Fed. 713, 56 C. C. A. 409, where injuries were from the falling of seats constructed by the concessioner.

A balloon ascension case brought liability upon the owner of a park by a pole released in the ascension and falling upon a boy spectator where no precautions were taken for the safety of spectators. The independent contractor theory was denied. Richmond & M. R. Co. v. Moore, 94 Va. 493, 27 S. E. 70, 37 L. R. A. 258.

The case of Smith v. Benick, 87 Md. 610, 41 Atl. 56, 42 L. R. A. 277, liability of owner was denied upon the ground that in the balloon ascension there was nothing in the way of concealed dangers that should have been provided against, nor was there any defect in the plan of ascension likely to cause injury, but a pole was caused to fall by negligence of an independent contractor.

So in Knotlernus v. North Park Street R. Co., 93 Mich. 348, 53 N. W. 529, 17 L. R. A. 726, it was said not to be negligence to grant permission to operate a switchback nor is there responsibility for the carelessness of its operators.

These two last cases do not appear to differ from the rule of responsibility of negligent management of what would probably cause injury, but these cases may not consider some attractions of this nature that other courts would. Possibly this is a mixed question of law and fact. The independent contractor theory has only a very limited recognition. C.

CORAM NON JUDICE.

SUGGESTED REFORMS IN LEGAL PROCEDURE.

By A. A. Graham, Topeka, Kan.

Determining the Fact and the Law:—In all state and United States courts, permitting ten of twelve and five of six jurors to render a verdict.

Under the common-law practice, the fact must be declared by a unanimous tribunal, the jury, while the court is held only to the barest majority on the law.

The so-called facts of a case are, in reality, only propositions, technically determined, as much the result of deliberation and compromise by the jury as is the law by the court, and neither can be more than opinions in any event. Verdict, what the jury says; opinion, what the court thinks. The standard for the finding of the fact should be no higher than for the determination of the law, as both are only the result of research. To level both to the same plane, to require only a safe majority in each, would seem reasonable procedure.

As to the court and the law, requiring more than a bare majority to decide any matter on appeal, and increasing the majority with the importance of the case: For instance, requiring the concurrence of eight of the nine justices of the Supreme Court of the United States to declare a statute unconstitutional, and of seven to reverse a judgment; also, the concurrence of six and five respectively in like matters where the court consists of seven members, and so on.

Such a system seems not only reasonable as a practical proposition; because, as a fact, jury verdicts are almost always against the personal inclination of one or more, although acquiesced in as matter of form; while, as to the court, fewer judgments where, notwithstanding irregularities at the trial, substantial justice has been done, would be reversed for whimsical technicalities; but our courts, and especially the Supreme Court of the United States, would be relieved of the odium of five-to-four opinions always unsatisfactory to the litigants and dis-

tasteful to the public inclined to suspicious intimations and severe criticism, not always expressed in temperate and well-chosen language.

Settling the Issues:—Requiring trial courts, with proper restrictions, to state in writing the issues of fact in all cases, and this to constitute the statement of the case in all subsequent proceedings.

The greatest abuse in courts of last resort now is the misstatement of the case, and the rendering of decisions not within the issues. Under our present practice, supreme courts, at great disadvantage must first determine what they think are the facts—what they think the pleaders and the jury thought—and then declare their opinions.

Reasons Reviewable:—Requiring trial courts, in making all final and appealable orders, to state the grounds therefor in writing to be filed with the papers in the case for use on appeal.

Too frequently trial courts rule without reason and reason without rule. Litigants below have a right to know the grounds for the orders of the trial court, and the supreme court should also know why and how the trial court applied the law. Such requirement would save us a world of "abuse of judicial discretion."

More Statutes Would Necessitate Fewer Decisions:—The enactment of statutes covering the doubtful or conflicting points of law in supreme court decisions, as well as those "not decided."

All will admit we have too much case-made, court-made or judge-made law; but, contrary to popular prejudice, we have not enough statutory law; and the only way to remedy the difficulty seems to be by law.

BOOKS RECEIVED.

Report of the Massachusetts Bar Association containing the Charter and By-laws, a list of Officers and Members and the Proceedings at the Second Annual Meeting.

Report of the New York Bar Association, proceedings of the Thirty-fifth Annual Meeting, held at New York, January 19-20, 1912, and Charter, Constitution, By-laws, Lists of Members, Officers, Committees and Reports for 1911.

Report of the South Carolina Bar Association Transactions of the Nineteenth Annual Meeting, January 24th and 25th, 1912.

Report of the Bar Association of the State of Kansas. Proceedings Twenty-ninth Annual Meeting, held in the city of Toledo, January 30-31, 1912.

Law of Contracts by William T. Brantley, Reporter of the Court of Appeals of Maryland, Author of the Law of Personal Property, etc., Second Edition, revised and enlarged. Baltimore, Md. M. Curlander. Review will follow.

The Continental Legal History Series, Vol. 1. General Survey of Events, Sources, Persons and Movements. Price, $6.00 net. Boston, Mass. Little, Brown & Co. Review will follow.

A Short History of English Law from the earliest times to the end of the year 1911, by Edward Jenks, B. C. L. Price, $3.00. Boston, Mass. Little Brown & Co. Review will follow.

The Law and Practice in Bankruptcy Under the National Bankruptcy Act of 1898, by Wm. Miller Collier. Fourth edition by William H. Hotchkiss. Ninth edition with amendments of 1903, 1906, and 1910, and with decisions to July 1st, 1912, by Frank B. Gilbert. Price, $9.00. Albany, N. Y.: Matthew Bender & Company. Review will follow.

American Digest Annotated Key Series, Vol. 13. Prepared and edited by the Editorial Staff of the American Digest System. St. Paul, Minn. West Publishing Company. Review will follow.

Illinois State Bar Association, 1912. Proceedings of the Thirty-sixth Annual Meeting of the Illinois State Bar Association, held at Chicago, Ill., April 26 and 27.

Mississippi State Bar Association, Vol. 7, 1912. Report of the Seventh Annual Meeting of the Mississippi Bar Association, held at Jackson, Miss., May 8, 9 and 10, 1912.

HUMOR OF THE LAW.

The Prisoner—There goes my hat. Shall I run after it?

Policeman Casey—Pwhat? Run away and never come back again? You stand here and I'll run after your hat.—Everybody's Magazine.

A well-known lawyer practicing before the Court of Claims tells of a youthful attorney in Indiana who talked for several hours, to the great weariness of the judge, the jury, and everyone in the court room who was obliged to listen.

At last, however, he sat down, and the opposing counsel, a white-haired veteran, rose to reply.

"Your honor," said he, "I will follow the example of my young friend who has just finished, and submit the case without argument."

With that he took his seat, and the silence was oppressive.

Thomas McKean, Chief Justice of Pennsylvania, was a man of gigantic stature and a fiery temper.

A mob in Philadelphia defied the efforts of the sheriff to disperse it. He so reported to Justice McKean, then sitting in full court.

"Have you read the Riot Act?"

"Yes, your Honor. It had no effect."

McKean's eye flashed dangerously. "Have you ordered out the military?"

"Yes. Shall I fire on them?"

"No. I'll disperse them."

McKean rose and rushed out of the court in his wig and gown, his face flushed with passion, into the midst of the riotous mob.

"I am Thomas McKean, Chief Justice, and I command you to disperse." So saying, he seized two of the ringleaders, literally tucked them under his arms, and returned to the court while the crowd crept home, silent as frightened sheep.—Green Bag.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Assignments**—Assignability.—A claim for money due from one person to another for the value of property stolen from the former and pledged to the latter is assignable, and is sufficient to support an action by the assignee.—Chapa v. Compton, Tex., 147 S. W. 1175.

2.——Implied Warranty.—In the absence of an express warranty, the assignor of a chose in action, for a valuable consideration, impliedly warrants that the chose is a valid obligation.—Miners Bank v. Burress, Mo., 147 S. W. 1110.

3. **Bailment**—Action by Bailee.—A photographer could not recover for injury to a picture belonging to a third party and left at his studio, where he was not responsible to the third party for the injury.—Cooper v. Hedden Construction Co., 135 N. Y. Supp. 746.

4. **Bankruptcy**—Adjudication.—The Bankruptcy Act does not operate as an attachment of the bankrupt's property, nor itself create a lien in favor of creditors who become such after the giving and before the filing of a chattel mortgage.—Detroit Trust Co. v. Pontiac Savings Bank, C. C. A., 196 Fed. 29.

5.——Arrest on Civil Process.—Bankruptcy Act July 1, 1898, § 9, which provides that a bankrupt shall be exempt from civil arrest, should be construed to exempt from arrest made after a bankruptcy petition is filed, and not to apply to an arrest on civil process properly made before filing of the petition.—Turgeon v. Bean, Me., 83 Atl. 557.

6.——Injunction.—A bankrupt has an absolute right to have execution on a judgment, recovered against him after the filing of a petition in bankruptcy and before his discharge, perpetually enjoined on motion after his discharge.—Crocker v. Bergh, Minn., 136 N. W. 737.

7.——Seizure by Trustee.—Under Act Cong. June 25, 1910, amending Bankrupt Act, trustee in bankruptcy of borrower held entitled to take possession of automobiles taken by bank under agreement to take title as security for loan.—Bank of North America v. Penn Motor Car Co., Pa., 83 Atl. 622.

8.——State Court.—While a court of bankruptcy has power to stay a suit in a state court against a bankrupt instituted prior to the bankruptcy, such power is discretionary, and should be sparingly exercised.—U. S. D. C., 196 Fed. 153.

9. **Banks and Banking**—Capital and Earnings.—Recoveries made on assets of a bank, which were previously charged by the bank to profit and loss account, were capital, and not earnings, and were properly not considered as earnings in determining the source of a dividend on the bank stock.—Miller v. Payne, Wis., 136 N. W. 811.

10.——Discounting Paper.—The discounting of commercial paper cannot be delegated to a single oncer of a bank, but is the function of the directors.—Mutual Trust Co. v. Stern, Pa., 83 Atl. 614.

11.——Notice.—The cashier of a savings bank had no authority to draw checks in the name of the bank in favor of defendants with whom he had a speculative account, and deposit the same with defendants as margins.—St. Charles Savings Bank v. Edwards, Mo., 147 S. W. 978.

12.——Trust Fund.—Where a depositor having a trust account with a bank drew a check thereon to pay a private debt to the banker, who, with knowledge of the trust, applied the amount on an individual claim of the bank, the bank acquired no title to the fund as against the true owner.—Fidelity & Deposit Co. of Maryland v. Rankin, Okla., 124 Pac. 71.

13. **Bills and Notes**—Burden of Proof.—Where a note was procured by fraud, an indorsee suing thereon has the burden to show that he purchased it for value before maturity, and without notice of the fraud.—Link v. Jackson, Mo., 147 S. W. 1114.

14.——Innocent Holder.—If a note is transferred to a bank as collateral for a debt of equal amount, and is taken in the regular course of business, the bank is an innocent holder, and the note is not subject to defenses existing against the original payee.—Farmers' Bank of Lyons v. Dixon, Neb., 136 N. W. 845.

15.——Makers.—Strangers to a note, who sign their names on the back thereof, become prima facie makers.—Woodsville Guaranty Savings Bank v. Rogers, Vt., 83 Atl. 537.

16.——Unfilled Blanks.—One who signs a note or check in blank and delivers it to another confers on the holder implied authority to fill in the blanks, and is bound by the check as filled in, if it pass to an innocent holder, though filled in contrary to the understanding of the parties.—Reddick v. Young, Ind., 98 N. E. 813.

17. **Brokers**—Dual Agency.—The defense of dual agency in an action for commissions must be affirmatively pleaded; the petition not disclosing such illegality in the contract.—Gray v. Novinger, Mo., 147 S. W. 1128.

18. **Carriers of Goods**—Lawful Rates.—Rates for transportation of freight in interstate commerce inserted in a contract by a carrier's agent held invalid if inconsistent with the schedules filed with the Interstate Commerce Commission.—McManus v. Chicago Great Western Ry. Co., Iowa, 136 N. W. 769.

19.——Right of Action.—Where goods, though injured by a carrier, retain a substantial value, the owner cannot refuse to take them, and sue the carrier for their entire value; but can recover only for the diminution in value.—McGrath v. Charleston & W. C. Ry. Co., S. C., 75 S. E. 44.

20. **Carriers of Live Stock**—Burden of Proof.—Where, in an action for injuries to a mule during transportation, the only evidence as to the mule's condition was that it was apparently sound when shipped and sick when it arrived at destination, the court properly gave a peremptory instruction for the defendant.—Asa W. Allen Co. v. Mobile & Ohio R. Co., Miss., 58 So. 710.

21.——Burden of Proof.—Where live stock injured in transit was accompanied by the owner, his agent, or representative, the burden is on the owner to show the carrier's negligence.—Illinois Cent. R. R. Co. v. Ward, Ky., 147 S. W. 949.

22. **Carriers of Passengers**—Regulations by Carrier.—A street car passenger, who accepts a transfer subject to reasonable rules, must comply therewith except in the case of an emergency.—Bingemann v. International Ry. Co., 135 N. Y. Supp. 743.

23. **Commerce**—Designating Freight.—The designation of a typewriter, dictionary, wearing apparel, trunk, and personal effects as emigrant movables was not a violation of the Interstate Commerce Act and that act does not prevent the state from enforcing its regulations against limitation of liability by carriers.—O'Connor v. Great Northern Ry. Co., Minn., 136 N. W. 743.

24.——Intoxicating Liquors.—The law which prohibits one from pursuing the occupation of selling intoxicating liquors by taking orders therefor in prohibition territory without a license does not violate the federal Constitution, as constituting an interference with interstate commerce.—Craft v. State, Tex., 147 S. W. 1163.

25. **Constitutional Law**—Juvenile Court.—The federal court cannot adjudge that the Juvenile Act is invalid because it does not provide for a jury trial, as the privileges and immunities of a citizen do not include the right to a jury trial in a state court.—Ex parte Januszewski, U. S. C. C., 196 Fed. 123.

26.——Riparian Rights.—While riparian rights once vested are subject to the rights of the public as to navigation, etc., the owner can be deprived of them only through due process.—Roanoke Rapids Power Co. v. Roanoke Navigation & Water Power Co., N. C., 75 S. E. 29.

27. **Contracts**—Building Contract.—Where a building contract was not strictly observed by either party, some alterations being ordered in writing and others orally, held, that the owner after taking possession and using the building could not defeat a suit for extra work because written orders were not always given.—Schmulbach v. Caldwell, C. C. A., 196 Fed. 16.

28.——Meeting of Minds.—Before a contract is completed or binding, there must have been a definite proposal on the one hand and an unequivocal and unconditional acceptance thereof on the other.—Chapin v. Cherry, Mo., 147 S. W. 1084.

29.——Pleading and Proof.—One cannot plead performance of a contract and rely on a waiver of performance except in an action on an insurance policy.—Hanenkratt v. Brougham, Mo., 147 S. W. 1129.

30.——Public Policy.—An agreement by a contractor to pay bonus to an architect for services in overseeing his work, or for securing the award, would be illegal.—Page v. Moore, Pa., 83 Atl. 580.

31.——Ratification.—A contract induced by misrepresentations cannot be effectually ratified until the ratifying party has a true knowledge of the facts.—Southern Loan & Trust Co. v. Gissendaner, Ala., 58 So. 737.

32.——Rescission.—To justify rescission of a contract by a party thereto, there must be actual default, or unequivocal renunciation, or legal disability to perform on the part of the adverse party.—Brady v. Oliver, Tenn., 147 S. W. 1135.

33.——Substantial Performance.—If a contractor endeavored, in good faith, to perform its contract and substantially performed it, there being unimportant defects, not such as to defeat the design, he may recover, less the damage occasioned by the failure to comply with the terms of the contract.—Mitchell v. Spurrier Lumber Co., Okla., 124 Pac. 10.

34.——Third Person.—A third person may maintain an action on a contract made for his benefit.—Miller v. Farr, Ind., 98 N. E. 805.

35.——Meeting of Minds.—Where a seller of bank stock and the buyer did not mutually agree as to whether the bank's original issue or subsequent issue of stock was the stock to be sold, there was no contract for want of mutual assent.—Feore v. Avent, Ala., 58 So. 727.

36. **Conversion**—Reconversion.—Though a will may, in legal effect, convert land into money, the subsequent acts of the beneficiaries may reconvert the subject-matter into land.—Nall v. Nall, Mo., 147 S. W. 1006.

37. **Corporations**—Dual Domicile.—A corporation being organized under the laws of two states, an issue by it of preferred stock without the consent of all its stockholders, required by the Constitution of one of the states, is illegal, though the meeting at which the plan was adopted was held in the other state, and the laws thereof would permit it.—Pollitz v. Wabash R. R. Co., 135 N. Y. Supp. 785.

38.——Foreign Corporation.—A domestic corporation cannot make itself permanently subordinate to a corporation organized under the laws of another state.—Council of Jewish Women v. Boston Section, Council of Jewish Women, Mass., 98 N. E. 862.

39.——Secret Profits.—Where directors, knowing that the corporation was going to purchase asphalt, contracted for it individually and then sold it to the corporation at a large secret profit, the transaction constituted misfeasance, rendering each of them who participated therein liable to account for the entire amount divert-

ed.—Asphalt Const. Co. v. Bouker, 135 N. Y. Supp. 714.

40. **Courts**—Jurisdiction.—A federal court of equity has jurisdiction of a suit to enforce a mechanic's lien given oy a state statute where there is the requisite diversity of citizenship and amount involved, although the statute may designate a particular state court in which such suits shall be brought.—Schmulbach v. Caldwell, C. C. A., 196 Fed. 16.

41. **Covenants** — Restrictions. — Restrictive covenants are strictly construed against the person seeking to enforce them.—Meaney v. Stork, N. J., 83 Atl. 492.

42. **Criminal Law**—Character Evidence.—Character evidence should be confined to the trait of character which is in issue, or which bears some analogy to the nature of the act charged. —People v. Haydon, Cal., 123 Pac. 1102.

43.——Preliminary Examination.—One charged with an ordinary felony is not entitled to a preliminary examination before a committing magistrate.—State v. Pierce, Mo., 147 S. W. 970.

44. **Damages**—Nominal.—Nominal damages are always recoverable for a breach of contract, even though no actual damages be shown; and a petition showing a breach of contract is not demurrable because no actual damages are alleged.—Harness v. Kentucky Fluor Spar Co., Ky., 147 S. W. 934.

45.——Pleading and Proof.—Where a petition claims general and special damages in named amounts, the jury, in assessing the special damages, are confined to the amounts specified; and an instruction, authorizing the recovery of such damages, is erroneous in failing to confine the award to the items specified.—Walters v. United Rys. Co. of St. Louis, Mo., 147 S. W. 1098.

46. **Dedication**—Acceptance.—Constructing a sewer and water main in a street laid out by an individual was an acceptance by the city of a dedication by maps and plats.—In re Pearsall Street in City of New York, 135 N. Y. Supp. 763.

47.——Revocation.—A dedication of land for a street may be revoked by the dedicator and his grantees before acceptance by the public either by user or by action of the public authorities.—Brown v. Curran, R. I., 83 Atl. 515.

48. **Divorce**—Defenses.—The pendency of an action for a separation on the ground of abandonment and nonsupport is no defense to an action for an absolute divorce.—Hall v. Hall, 135 N. Y. Supp. 741.

49.——Jurisdiction.—Divorce and alimony were originally of ecclesiastical cognizance, but they are now regulated by statute, and the courts's jurisdiction depends upon the statutory enactment.—Ex parte Helmert, Ark., 147 S. W. 1143.

50. **Easements**—Reservation by Grantor.—One who grants a right of way over his land conveys nothing but the right of passage, and reserves all incidents of ownership not granted.—Mercantile Library Co. of Philadelphia v. Fidelity Trust Co., Pa., 83 Atl. 592.

51. **Ejectment**—Equitable Estoppel.—Equitable estoppels are proper defenses in ejectment, and evidence thereof is admissible under the plea of not guilty.—Coram v. Palmer, Fla., 58 So. 721.

52. **Equity**—Jurisdiction.—Unless the subject-matter of a suit is beyond equitable cognizance, an objection to the jurisdiction of equity must be taken at the earliest opportunity.—Bowsman v. Anderson, Ore., 123 Pac. 1092.

53. **Evidence**—Judicial Notice.—A court held to judicially know that diseases are communicated in public barber shops, but not the length of time it would take a student to learn how to prevent the spread of disease.—Moler v. Whisman, Mo., 147 S. W. 985.

54.——Patent Ambiguity.—Where a contract on its face equally describes two or more persons or things, the ambiguity is patent and parol proof of what was intended will not be received.—Feore v. Avent, Ala., 58 So. 727.

55. **Execution**—Pledge.—The general title of a pledgor of goods and chattels is vendible, and may be levied upon by execution or attachment subject to the pledgee's lien.—Milliken-Helm Commission Co. v. C. H. Albers Commission Co., Mo., 147 S. W. 1065.

56. **Executors and Administrators**—Bequest. —A bequest to one named as executor is presumably a bounty, and not compensation for services to be rendered, unless it appears, expressly or by clear implication, that the testator intended that the legacy should be in lieu of commissions.—In re Fox's Estate, Pa., 83 Atl. 613.

57.——Purchase by.—Where one falsely claims to be a creditor of decedent and procures the appointment of an administrator, and purchases land belonging to decedent's minor son, on making it appear to the probate court that the land belongs to decedent's estate, the sale will be set aside in equity at the suit of the son.—Bowsman v. Anderson, Ore., 123 Pac. 1092.

58.——Substituted Administrator.—Though an executor be entitled under a will to exercise a power of sale without judicial approval, a substituted administrator must procure approval.—Randall v. Gray, N. J., 83 Atl. 482.

59. **False Imprisonment**—Civil Process.—A defendant procuring the arrest on civil process of a female is not relieved from liability by the advice of the magistrate issuing the warrant; the defense of probable cause not being applicable to actions for false imprisonment.—Nelson v. Kellogg, Cal., 123 Pac. 1115.

60. **Fixtures**—Constructive Notice.—A mortgagee of land is not bound to examine chattel mortgage records to ascertain whether there is any chattel mortgage on fixtures which have been so attached to the land as to become a part thereof.—Elliott v. Hudson, Cal., 124 Pac. 108.

61.——Intention.—Chattels may be annexed to real estate and still retain the character of personal property; the intention with which they are annexed being one of the circumstances which may determine such character.—Lawton Pressed Brick & Tile Co. v. Ross-Kellar Triple Pressure Mach. Co., Okla., 124 Pac. 43.

62. **Fraudulent Conveyances**—Crops.—One who labors in producing crops for another does not acquire such a title to the crops that h's judgment creditors may subject the crops to their liens.—Willoughby v. Pope, Miss., 58 So. 705.

63.——Equity.—Where a husband conveyed his property to his father to defeat his wife's right under a decree awarding her separate maintenance, held, that an action in equity to set aside the conveyance was proper.—Pickel v. Pickel, Mo., 147 S. W. 1059.

64.——Husband and Wife.—Where a wife conveyed certain real property to her husband in order to protect herself from a claim by a former husband, and, this being settled, it was reconveyed to her, it was subject to the debts of the second husband while he held the title on the faith of his ownership.—Kalinowski v. McNeny, Wash., 123 Pac. 1074.

65. **Frauds, Statute of**—Memorandum.—A written memorandum evidencing the terms of a contract is sufficient to establish it, whether such memorandum was made before or after the contract was performed.—Smith v. Hunt, Ind., 98 N. E. 841.

66.——Parol Contract.—A purchaser of land may rely on the statute of frauds to invalidate a parol contract made by his vendor and one claiming adversely under such parol contract. —Collins v. Lackey, Okla., 123 Pac. 1118.

67. **Guaranty**—Condition Precedent.—Though a guaranty of a note be one of collection and not of payment, this does not impose on the guarantee the duty of bringing an action on the note as a condition precedent to recovery on the guaranty, where the note was assigned to a third person as trustee of the parties.—Avery v. Moore, Kan., 124 Pac. 173.

68. **Homicide**—Dying Declaration.—To be admissible, a dying declaration need not be in immediate proximity to death, being competent where there is an impending sense of dissolution.—State v. Watkins, N. C., 75 S. E. 22.

69.——Opprobrious Words.—Mere opprobrious words cannot reduce a homicide provoked thereby to manslaughter.—McMurphy v. State, Ala., 58 So. 748.

70. **Husband and Wife**—Entireties.—Where, in partition between a married woman and others, her share is conveyed to her and her husband, they do not hold by the entireties, but she retains her actual interest in the land.—Stoffal v. Jarvis, Pa., 83 Atl. 609.

71.——Presumption.—Where plaintiff's wife purchased material and made up garments and shipped them to him by bill of lading naming him as consignee, there was a presumption that in shipping the goods she acted as his agent.—Tradewell v. Chicago & N. W. Ry. Co., Wis., 136 N. W. 794.

72.——Wife's Illness.—A husband may maintain an action for damages for the physical illness of his wife, due to mental anguish caused by the publication of words libelous per se.—Garrison v. Sun Printing & Publishing Ass'n., 135 N. Y. Supp. 721.

73. **Indemnity**—Replevin Bond.—A surety on a replevin bond, who had been compelled to pay a judgment, held entitled to maintain an action against the one who had induced him to become surety, notwithstanding the fact that the surety had taken indemnity from another.—United States Fidelity and Guaranty Co. v. Twelfth Ward Bank, 135 N. Y. Supp. 811.

74. **Indictment and Information**—Variance.—Where the undisputed evidence before the grand jury was that the defendant made an assault with a hammer, and the indictment alleged that the description of the weapon was unknown, there was a variance.—Johnson v. State, Ala., 58 So. 754.

75. **Injunction**—Juvenile Court.—An injunction by the juvenile court of Minneapolis forbidding marriage of girl of 15 years, to which marriage her parents had consented, was granted without jurisdiction, and disobedience thereof was not a contempt.—State v. District Court of Hennepin County, Minn., 136 N. W. 746.

76.——Political Rights.—A court of equity has no jurisdiction to restrain the holding of an election, since the right involved in a political one.—Copeland v. Olsmith, Okla., 124 Pac. 33.

77. **Insurance**—Estoppel.—Where the soliciting agent and medical examiner of a beneficial association caused an applicant for membership to falsely answer questions in the application by improperly stating their scope, the insurer is estopped from relying on those misrepresentations.—Masonic Life Ass'n. of Western New York v. Robinson, Ky., 147 S. W. 882.

78.——Forfeiture.—When an insurance policy provides that it shall be forfeited for nonpayment of premiums before a stipulated date, time is of the essence of the contract and the failure to so pay terminates it ipso facto.—Equitable Life Assur. Society of United States v. Ellis, Tex., 147 S. W. 1152.

79.——Mortgage Clause.—The contract between an insurer and the mortgagee as expresed by a mortgage clause is separate and distinct from the contract between the insurer and the owner.—Heilbrunn v. German Alliance Ins. Co. of New York, 135 N. Y. Supp. 769.

80.——Total Loss.—Under a fire policy, to make a loss total under the valued policy act, the building need not be utterly destroyed; but if its identity is gone, and the remnant cannot be used as a basis for repair, the loss is total.—Hinkle v. North River Ins. Co., W. Va., 75 S. E. 54.

81. **Judgment**—Equitable Relief.—In order to obtain equitable relief against a judgment, plaintiff must show that the entry and rendition of the judgment was not the result of his own negligence.—Bowsman v. Anderson, Ore., 123 Pac. 1092.

82.——Non Obstante Veredicto.—The court cannot enter a judgment non obstante veredicto, where it could not give binding instructions. —Page v. Moore, Pa., 83 Atl. 580.

83. **Landlord and Tenant**—Sublessee.—A mortgagee of a lease, who takes possession of the leased premises, is, in effect, an assignee of the lease, and is liable to the landlord for the rent; but a mortgagee of a lease, not in possession, is not an assignee.—Cockrell v. Houston Packing Co., Tex., 147 S. W. 1145.

84.——Unlawful Detainer.—Where an owner leases his premises, and the lessee, at the time of an entry and detainer by a third person, is the tenant under the lease, the right of action for unlawful detainer accrues to the tenant, and not to the owner.—Prendergast v. Graverman, Mo., 147 S. W. 1094.

85. **Libel and Slander**—Apology.—In an action for defamatory words, apology held admissible in mitigation of damages.—Dixie Fire Ins. Co. v. Betty, Miss., 58 So. 709.

86.——Injury Invited.—An attorney having procured publication of an article laudatory of his manner of conducting an action, a publication without malice in another paper truthfully stating the facts and fairly commenting on the attorney's conduct was not libelous per se.—Thompson v. Matthiasen, 135 N. Y. Supp. 796.

87. **Limitation of Actions**—Amending Pleading.—A new cause of action cannot be introduced, or new subject-matter presented, or material defects in pleadings corrected, after the statute of limitations has become a bar.—Bender v. Penfield, Pa., 83 Atl. 585.

88. **Malicious Prosecution**—Injunction.—A party sustaining damages in consequence of the wrongful issuance of an injunction may sue for malicious prosecution and is not limited to an action on the injunction bond.—Powell v. Woodbury, Vt., 83 Atl. 541.

89.——Pleadings.—In an action for malicious prosecution of a search warrant, allegations that the plaintiff was humbled and injured in reputation because of public suspicion are sufficient to sustain a recovery, without allegation

or proof of special monetary loss.—Olson v. Haggerty, Wash., 124 Pac. 145.

90. **Master and Servant**—Assumption of Risk.—The principle of assumption of risk by the servant is based upon a contract, express or implied.—Murphy v. Pacific Telephone & Telegraph Co., Wash., 124 Pac. 114.

91.——Guarding Machinery.—A plant for the generation of electricity is a "manufacturing establishment," as affecting the owner's liability for death of an employee, resulting from his failure to guard machinery.—Angola Ry. & Power Co. v. Butz, Ind., 98 N. E. 818.

92.——Safe Place.—A telephone company owes the same duty to inspect its poles and furnish linemen with a reasonably safe place to work that other masters owe to their servants.—Hulse v. Home Telephone Co., Mo., 147 S. W. 1124.

93.——Safe Place.—The duty of a master to furnish his employee a safe place to work has no reference to places at or about which the employee has no business to be.—Montgomery Cotton Mills v. Bowdoin, Ala., 58 So. 732.

94. **Mortgages**—Comity.—In case of conflict, the rule of comity gives way to the rule of real property, including mortgages and foreclosures.—Hughes v. Winkleman, Mo., 147 S. W. 994.

95. **Municipal Corporations**—Notice of Powers.—Whoever deals with a municipality does so with notice of the limitation on its or its agents' powers; and if he goes beyond the limitations imposed he does so at his peril.—O'Neil Engineering Co .v. Incorporated Town of Ryan, Okla., 124 Pac. 19.

96.——Nuisance.—A municipal corporation, by ordinance, may not declare that to be a nuisance which is not so in fact, or suppress any business which is not a nuisance per se.—City of St. Louis v. Dreisoerner, Mo., 147 S. W. 998.

97. **Negligence**—Contributory Negligence.—Where the plaintiff's own evidence shows his injury to have been caused as much by his own negligence as by that of the defendant, the trial court should declare for the defendant as a matter of law.—Collett v. Kuhlman, Mo., 147 S. W. 965.

98.——Omission of Duty.—There is a wide distinction between an omission, consisting of merely a want of the exercise of ordinary care, and actual or constructive intent to injure.—Barlow v. Foster, Wis., 136 N. W. 822.

99. **Nuisance**—Noxious Gases.—A manufacturer of chemicals, who unnecessarily and frequently discharged into the open air large quantities of a destructive gas, thereby causing substantial injury to an individual, unlawfully uses his property creating a nuisance.—Gasse v. Development & Funding Co., 135 N. Y. Supp. 732.

100.——Special Injury.—A public nuisance, which is at the same time a private nuisance, may be proceeded against by an individual specially injured, either by injunction, or by an action for damages.—Seigle v. Bromley, Colo., 124 Pac. 191.

101. **Partnership**—Burden of Proof.—The law never presumes the existence of a partnership, but requires those who assert its existence, especially as between themselves, to prove such existence by the clearest and most positive evidence.—Chapin v. Cherry, Mo., 147 S. W. 1084.

102.——Real Estate.—Real estate not suitable for a partnership business nor intended to be used therein, does not become assets of the firm in equity by mere verbal agreement of the owner for a consideration that it be considered such.—Richtman v. Watson, Wis., 136 N. W. 797.

103. **Physicians and Surgeons**—X-ray.—The instrumentalities employed by a physician in taking an X-ray photograph of plaintiff's injuries being entirely under the control of defendant, the rule of res ipsa loquitur applies in an action for injuries from taking the photograph.—Jones v. Tri-State Telephone & Telegraph Co., Minn., 136 N. W. 741.

104. **Principal and Surety**—Contribution.—Contribution between sureties on separate bonds for completion of a building may be compelled by one who has paid more than his share of the amount necessary to complete the building.—Malone v. Stewart, Pa., 83 Atl. 607.

105.——Injunction.—Where a surety, having paid the debt, issues execution against a cosurety for an excessive amount, the latter's remedy is by motion to quash, or injunction, in which proceeding it is the duty of the court to summarily determine the amount of the cosurety's liability.—Wiedemann v. Crawford, Ky., 147 S. W. 951.

106. **Railroads**—Licensees.—Where railroad yards in a city were customarily used by pedestrians, it was the railroad's duty to operate trains there at a moderate rate of speed, to give warning of approach, and to take proper precautions for the security of human life.—Cincinnati, N. O. & T. Ry. Co. v. Harrigan, Ky., 147 S. W. 942.

107. **Reformation of Instruments**—Mutual Mistake.—The court may reform an instrument on the ground of mutual mistake, though the mistake on the part of each party is not with respect to precisely the same facts.—Salomon v. North British & Mercantile Ins. Co. of New York, 135 N. Y. Supp. 806.

108.——Right of Action.—A contract cannot be reformed to make a different contract from that intended, though made in ignorance of facts, which, if known, might have prevented the making of the contract.—Frost v. Reagon, Okla., 124 Pac. 13.

109. **Sales**—Mistake of Fact.—Where anything is bought under a material mistake of fact, the consideration may be recovered, whether the mistake be that of both parties or of one alone.—Miners Bank v. Burress, Mo., 147 S. W. 1110.

110. **Specific Performance**—Part Performance.—Where a purchaser of land entered into possession in pursuance of an oral contract, making valuable improvements and paying the entire purchase price, his only heir could maintain specific performance.—Zeuske v. Zeuske, Ore., 124 Pac. 203.

111.——Statute of Frauds.—Possession taken by vendee under parol contract, not in pursuance of the contract or with knowledge of the vendor, is sufficient to take the contract out of the statute of frauds, so as to authorize specific performance.—Collins v. Lackey, Okla., 123 Pac. 1118.

112. **Sunday**—Contracts.—A written contract for the shipment of live stock, executed on Sunday, will not be held void, where the stock is shipped, the shippers taking passage under the contract and in other ways recognizing it, but these acts will be held to constitute a ratification.—St. Louis & S. F. R. Co. v. Swearingen & Co., Okla., 123 Pac. 1122.

113. **Tenancy in Common**—Conversion.—Where two joint owners of different articles agree upon a division of one of the articles, and one of the parties afterwards converts to his own use the share of the other, he will be liable in an action for conversion though the other articles have not been partitioned.—Fullerton v. Fullerton, Neb., 136 N. W. 847.

114. **Trusts**—Confidential Relation.—Before a party who did not pay the consideration for a conveyance can establish a constructive trust in his favor as against one holding the legal title, he must show the existence of a confidential relation between the other party and himself.—Chapin v. Cherry, Mo., 147 S. W. 1084.

115.——Mingling Funds.—Where a party mixes trust funds with his, the whole will be treated as trust property, except so far as it may be distinguished.—Fidelity & Deposit Co. of Maryland v. Rankin, Okla., 124 Pac. 71.

116.——Parol Evidence.—A conveyance by a wife to her husband on his agreement to reconvey after a limited time is an express trust which cannot be created or proved by parol.—Kalinowski v. McNeny, Wash., 123 Pac. 1074.

117. **Vendor and Purchaser**—Constructive Notice.—A purchaser of the legal title to lands is not bound to take notice of a registered lien created by any person, other than those through whom he is compelled to deraign his title.—Perkins v. Cissell, Okla., 124 Pac. 7.

118. **Wills**—Construction.—Where will directs that in a certain event, after expiration of particular interest, estate shall go to those who would take under intestate laws, it is construed as meaning those who would have taken at his death, unless a different intent appears.—In re McFillin's Estate, Pa., 83 Atl. 620.

119.——Widow's Election.—That portion of a testator's estate which a widow receives on election to take against her husband's will comes to her by virtue of the statute as estate of an intestate, and not as the estate of a testate.—In re Guenhoer's Estate, Pa., 83 Atl. 617.